**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 415 OF 2001**

**WITH**

**CIVIL APPLICATION NO. 525 OF 2001**

Smt. Sarubai Eknath
Bhalsingh & others ..... Appellant/plaintiff

versus

Vishwanath Vitthal
Bhalsingh & others. ...respondent/defendant.

Shri S.M.Railkar for the appellants
Shri G.S.Godbole for respondents.

**CORAM; V.R. KINGAONKAR, J.**
**DATED; 11TH JANUARY 2007**

**P.C.:**

1. Heard the learned counsel for the parties.

2. Mr. Railkar , the learned counsel appearing for the appellant submits that part of the transactions shown in the sale deed has been rejected by the appellate court and yet the another part is allowed. He submitted that findings of both the courts are bot correct. As against this, the learned counsel for the respondents would submit that the second appeal does not involve any substantial question of law and the findings on facts cannot be gone into in the second appeal.

3. The plaintiff's suit (RCS No. 103/90) was dismissed. The suit was for injunction simplicitor in respect of two agricultural lands bearing survey No. 202/1 and survey No. 198/1. The plaintiff/respondent's contention was that the two lands were purchased on 9-1-1970 from one Bhagubai Barne who was the exclusive owner of both the lands. The defendemts obstructed in his possession of both the lands and as such claimed injunction. The execution of sale deed (Exh.50 dated 9-1-1970) was admitted by the defendants. The trial court, however, held that though the execution was admitted, yet there is no presumption regarding contents of the document. The trial court came to the conclusion that the plaintiff failed to prove factum of possession on the strength of the document namely sale deed dated 9-1-1979 in respect of either of the suit land. The appellate court reconsidered the evidence on record and came to the conclusion that factum of possession to the extent of survey no. 202/1 is duly proved in view of the revenue entries which reflected name of plaintiff's father. The appellate court, however, came to the conclusion that possession in respect of survey no. 198/1 was not proved by the plaintiff in as much as there was no documentary evidence, like revenue entries, to corroborate such averments. Therefore the appellate court refused part of the

decree and granted injunction in respect of survey no. 2202/1. Hence the second appeal.

4. On hearing the learned counsel for the parties and having gone through both the judgments impugned, it is manifestly clear that the entire question was regarding factum of possession. The sale transaction is old one. The execution of sale deed is undisputed. Therefore, the trial court had no reason to dislodge the contents of sale deed by saying that the same was not proved. The appellate court seems to have considered the revenue entries and other collateral evidence besides the contents of the sale deed. It is not that only on the basis of the statement made in the sale deed (Exh.50) that the appellate court reached the conclusion regarding factum of possession in respect of survey no.202/1. The appreciation of evidence made by the first appellate court cannot be faulted with when there is no perversity. There is no substantial question of law involved in the present appeal. Hence it cannot be entertained under section 100 of the CPC. The cross objection filed by the original plaintiff cannot therefore be considered. Liberty to file separate appeal in respect of survey No. 198/1.

5. In the result, the appeal is summarily dismissed.

No order as to costs.

xxx